

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COLUMBUS ALLEN, JR.,  
Plaintiff,  
v.  
G. MATTESON, et al.,  
Defendants.

No. 2:23-cv-01217-DC-EFB (PC)

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner, proceeds without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On March 25, 2024 the court screened plaintiff's amended complaint pursuant to 28 U.S.C. § 1915A. ECF No. 12. The court dismissed the amended complaint for failure state a claim but granted plaintiff 30 days leave to further amend his complaint to cure the defects. *Id.* The screening order warned plaintiff that failure to timely file an amended complaint could result in a recommendation that this action be dismissed. A subsequent order extended the time to file a second amended complaint to June 7, 2024. ECF No. 14. Five months past the deadline, plaintiff has not filed a second amended complaint. Thus, it appears that plaintiff is unable or unwilling to cure the defects in the complaint.

Plaintiff has filed two motions to stay this action pending court proceedings related to his

1 petition for writ of habeas corpus. ECF Nos. 15 & 16. However, without an operative complaint,  
2 the motions to stay are essentially moot. In light of plaintiff's continued failure to amend, it is  
3 recommended that this action be dismissed without prejudice to refile at a later date.

4 Accordingly, it is ORDERED that plaintiff's motions to stay this action (ECF Nos. 15 &  
5 16) are DENIED as moot.

6 It is RECOMMENDED that this action be DISMISSED without prejudice for the reasons  
7 stated in the March 25, 2024 screening order.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
10 after being served with these findings and recommendations, any party may file written  
11 objections with the court and serve a copy on all parties. Such a document should be captioned  
12 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
13 objections shall be served and filed within fourteen days after service of the objections. The  
14 parties are advised that failure to file objections within the specified time may waive the right to  
15 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
16 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17  
18 Dated: December 31, 2024

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE